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Legal Guide LT-5

OPTIONS FOR A LANDLORD: WHEN A TENANT'S PERSONAL PROPERTY HAS BEEN LEFT IN THE RENTAL UNIT

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When tenants move out of a rental unit, they are required to also move their personal property. (Personal property is everything which a person can own except for land. Personal property is also referred to as personal possessions or personal belongings.) California law has three different procedures which a landlord may follow to remove and dispose of personal property left in a rental unit after a tenant has vacated. A landlord who has properly followed one of the procedures cannot be held liable for any damages related to the property.

The three procedures apply to the following three situations:

1. The tenant has requested that the property be returned.
2. It appears that the property has been abandoned.
3. It appears that the property has been lost. (The owner is unknown.)

Which procedure a landlord should follow in any particular case depends upon the situation.

Some general guidelines for all situations.

Store property safely . . .

When a tenant has left personal property in a rental unit, the landlord should safely store the property. A landlord may choose to leave the property in the rental unit. But if the unit may be rented soon, the landlord should store the property elsewhere. Wherever the landlord chooses to store the property, it must be kept in a safe place, where the property will not be damaged or stolen. In storing the property, the landlord must use reasonable care to keep it safe. If property is lost or damaged, and if the landlord did not act in a deliberate or negligent manner in storing and caring for the property, the landlord will not be liable for any storage related

loss.¹

Act reasonably . . .

In deciding whether or not a particular case fits into the lost property situation or the abandoned property situation, a landlord is held by the law to a certain standard. And in deciding who the property owners are or might be, the landlord is held to that same standard. The standard is: A landlord must act reasonably, and the landlord's actions must be based on a reasonable belief.

The law defines a "reasonable belief" as the actual knowledge or belief that a prudent person would have, given the facts then known by that person. Generally a landlord is not required to conduct an investigation to obtain more facts. But, if a landlord has information which indicates that an investigation would provide more facts about the identity of the property owner, and if the cost of the investigation would be reasonable in view of the probable value of the property, then the landlord should make the investigation. If an investigation should have been made but wasn't, then the landlord is held to a higher standard - the reasonableness of the landlord's actions would be judged as if the landlord had conducted an investigation and had known the facts which the investigation would have revealed.²

What all this means is that in deciding whether the property left behind is abandoned or lost, the landlord must keep in mind all of the facts that the landlord knows or ought to know about the situation. And in deciding who the property owner or owners might be, the landlord also must keep in mind all of the facts that the landlord knows or ought to know. For example, if the landlord knows that a telephone call or two, or a search of public records, would give the landlord more information about who the property owner is, and if the value of the property is significantly more than the cost of the phone calls and public records search, the landlord should make the calls and do the search.

Avoid unlawful self-help ...

When a landlord disposes of personal property by properly following one of the three legal procedures, the landlord can avoid the possibility of being held liable for unlawfully taking or converting the property.³

If a landlord goes about disposing of the property in some other way, resorting to self-help methods, the landlord could be liable for money damages.⁴

Please remember . . .

The steps outlined in this legal guide are only for situations where personal property has been left in a rental unit which has been vacated by the tenant. If the tenant has not vacated the unit, a landlord has no legal right to dispose of personal property in the unit. If a landlord believes that a unit has been abandoned by the tenant, the landlord must follow certain legal steps to declare the rental unit abandoned. Only after the rental unit is legally considered abandoned can the landlord dispose of personal belongings left in it on that basis.

SITUATION NO. 1: Where The Tenant Has Requested Return of Property

Within 18 days after moving out of a rental unit, a tenant may write the former landlord requesting that the personal possessions left in the rental unit be returned. When a tenant has properly followed all the steps of this procedure, the landlord is required by law to return the possessions to the tenant, and also becomes liable for damages if the possessions are not returned. If a tenant is unable to take the steps for requesting return of property, the tenant may authorize someone else to act as the tenant's representative. The landlord should treat the representative as if she or he was the tenant.⁵

The tenant must make a written request, which must include a description of the property left behind, and must give the landlord the tenant's current mailing address.⁶

The landlord may charge the tenant reasonable costs for removing and storing the tenant's property. A landlord is only permitted to recover costs which are reasonably related to the cost of removing the tenant's property from the rental unit and storing it. The storage costs charged cannot be more than the fair rental value of the space reasonably required to store the property.⁷ That is, if all the tenant's property would fit in a storage space unit of 10 square feet, the landlord is not entitled to receive payment for the cost of renting 15 square feet.

However, before the tenant becomes legally obligated to pay those costs, the landlord must have followed certain steps. To properly claim costs, the landlord must, within five days after receiving the tenant's written demand for return of the property, make

a written demand on the tenant to pay costs. The written demand must individually list all the costs which the landlord is asking the tenant to pay, including both the amount of each charge and what each charge is for. The landlord may either give the demand for payment of costs to the tenant in person, or may mail it to the tenant at the mailing address provided by the tenant.⁸

The tenant should pay the landlord the reasonable costs of removing and storing the property. Next, the landlord and tenant should talk to each other and agree upon a time for the tenant to claim the property. Both the landlord and the tenant must agree to a time that is no more than 72 hours (three days) after the time when the tenant paid the landlord's costs.⁹

If no costs were paid, either because the landlord did not demand any costs or because the landlord did not properly demand costs, the tenant and the landlord should agree to have the tenant claim the property within a reasonable time after the tenant's request letter was received by the landlord. The law assumes that three days is a reasonable time in the absence of evidence to the contrary.¹⁰

Even in the best of circumstances, things can go wrong -- for instance a landlord who followed all the correct steps and released the property to a tenant might later be contacted by a second tenant demanding return of the same property. In that case, if a landlord has followed the law, the landlord cannot be held liable even if he or she gave the property to the wrong person. If a landlord has complied with the law, then the law protects the landlord in this situation.

Furthermore, a landlord could receive two conflicting demands for the same personal property from former tenants who rented the same unit. In this situation the landlord must give the property to the tenant who first properly requested return of the property.¹¹ In such a case, the law will not require the landlord to guess or to decide who is the true owner of the property.

A landlord who has improperly retained personal property after a tenant has properly followed the steps to request that the property be returned can be required to pay the tenant actual damages up to the value of the property retained, and up to \$250 as punitive damages for each violation, as well as the tenant's attorney's fees and court costs if the tenant wins in court.¹²

SITUATION NO. 2: Where The Property Is Apparently Abandoned

To dispose of apparently abandoned property without risking liability for damages to the landlord, a landlord must follow the steps below. If the tenant left the unit because of a court-ordered eviction, the timing of the steps is slightly different. This difference is discussed below in the bold bracketed [] sections.

Steps to follow with abandoned property.

To dispose of personal possessions which apparently have been abandoned, the landlord should take the following steps:¹³

1. a. Write a notice to the former tenant or tenants.¹⁴

[No notice is required for former tenants who were evicted under a writ of possession.¹⁵ A notice already is contained in the writ of possession form which the sheriff is required to serve upon the evicted tenant or tenants.]

- b. Write a notice to any other person whom the landlord believes may be the owner of some or all of the abandoned property.¹⁶

The notice¹⁷ must:

- 1) Give enough information about the property so that the possible owner can identify it.
- 2) Tell the tenant or other possible owner receiving the notice the place where the property may be claimed.
- 3) Give the tenant or other possible owner a deadline after which time the property cannot be claimed.

[A tenant who is evicted under a writ of possession has 15 days after the landlord takes possession of the rental unit to pay reasonable costs of storage and to take possession of items left in the rental unit.]¹⁸

- 4) Tell the tenant or other possible owner what the landlord intends to do with any of the property which is not claimed by the deadline.
- 5) Tell the tenant or other possible owner whether reasonable costs of storage will be charged before the property is returned.
2. Deliver the notices to the tenants and other possible owners of the property.
3. Meet with the tenant and other possible owners when they come to claim the property.
4. If by the deadline, the tenant or other person

pays the landlord any properly demanded storage costs, the landlord must release the property to the tenant or to any other person who the landlord reasonably believes to be its owner.¹⁹

5. If the property is not released and if the landlord stated in his or her notice that he or she intended to sell the property at a public sale, the landlord must release the property to the former tenant if, before the actual sale, the tenant claims it and pays the reasonable costs of storage and of advertising the sale.²⁰

6. If, after the deadline, there is any property which was not claimed by the tenants or any other people notified, depending on the circumstances, the landlord must do one of two things with the remaining property:²¹

a. If the landlord reasonably believes that the property is worth less than \$300, he or she may keep it, give it away, sell it or destroy it.

b. If the property is reasonably believed to be worth \$300 or more, the landlord should arrange to have it sold at a public bidding sale after giving notice of the sale through publication. Both the landlord and the tenant have a right to bid on the property at the sale. After the property is sold, the landlord may deduct the costs of storage, advertising the sale, and conducting the sale. The remaining money must then be paid over to the county. The county can then give the money to the property owner if the owner claims the money at any time within one year after the date when the county received the money.

What should the notice say?

Under California law, the notice must contain certain information.²² Sample notices (one to a former tenant and one to a person other than a former tenant) are attached. A landlord may use this sample notice, but will have to fill in additional information, such as the description of the property, the place where the property may be claimed, and a date by which the property must be claimed. These are the legal requirements:

1. A description of the property.

The property should be described both in sufficient detail, and in a way which gives all possible owners enough information for them to determine whether or not the property might be theirs. The legal limitations of liability provided to a landlord do not apply to property which is not described in the notice. However, if the property includes a container (for example a trunk, or box) which is secured (that is locked, fastened or tied, in

a way which would keep anyone from easily getting into it), then the contents of the container need not be described in the notice.²³

2. A deadline for claiming property.

A date must be specified by which the potential owner must claim the property. The date given must be at least 15 days after the notice was personally delivered or, if the notice was mailed, a date not less than 18 days after the notice was mailed.²⁴

3. Charge for storage.

The property owner may be charged for the reasonable cost of storage of the property, and that the charges must be paid before the property is released to the owner.

4. Where the property is located.

This should include both the address where the property was left and, if different, when the property may be claimed by the owner.

How should the notice be delivered?

The notice may be delivered to the tenant or other possible owner by either:

1. handing the notice to tenant or other possible owner -- that is, personally delivering the notice; or
2. mailing the notice by first class mail with postage prepaid to the tenant or other possible owner at her or his last known address.

In addition, if the landlord has reason to believe that the notice sent to the person's last known address will not be received by the person, the landlord also must send the notice to any other address, if known, where it would be reasonable to expect the person to receive the notice.

And, if the notice is sent by mail to the former tenant, one copy of the notice also must be mailed to the tenant at the address of the rental unit that the tenant vacated.²⁵

How should storage costs be charged?

If a former tenant claims the property, the landlord may charge the tenant the reasonable costs of storage for all personal property left at the rental unit, but only to the extent that the tenant has not paid those costs to the landlord previously.²⁶

But, if an owner other than the former tenant claims a portion of the property, the landlord may only

require that person to pay the reasonable costs of storage for the property that person claims.²⁷

In any event, the landlord cannot charge more than one person for the same costs.²⁸

If the landlord has stored the personal property at the rental unit, the cost of the storage must be the fair rental value of the space reasonably required for such storage for the term of storage.²⁹

What is the landlord's liability?

Once the landlord has given the proper notices, whether a landlord is liable to anyone for the property depends upon whether the property was released to someone or whether the property was disposed of in another way.

Property was released:

If the property is released to the former tenant, then the landlord is not liable to any person for that property.³⁰

If the property is released to someone other than a former tenant, and if the landlord reasonably believed that person to be the owner of the property, the landlord is not liable for that property to:

- a. any person to whom notice was given; or
- b. any person to whom notice was not given unless such person proves that: (1) prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property; and, (2) that the landlord knew or should have known, upon reasonable investigation, the address of such person.³¹

Property disposed of in another manner (not released):

If the landlord reasonably believes that the total resale value of all the property is less than \$300, the landlord may dispose of the property in any manner.³² However, if the landlord reasonably believes that the total resale value of all of the property is \$300 or more, the property must be sold at a public sale by competitive bidding.

If the property is disposed of in either of those ways, the landlord is not liable for the property to:

- a. any person to whom notice was given; or
- b. any person to whom notice was not given unless such person proves that: (1) prior to disposing of the property, the landlord believed or reasonably should have believed that such

person had an interest in the property; and, (2) that the landlord knew or should have known, upon reasonable investigation, the address of such person.³³

SITUATION NO. 3: Where The Property Apparently Is Lost

To dispose of apparently lost property (legal owner is unknown) without risking liability to the owner, a landlord must follow these steps:

If the value of the property is reasonably believed to be \$100 or more,³⁴ the landlord must:

1. Turn the property over to the police department of the city where the property was found. If the property was found outside of the city limits, then the property should be turned over to the sheriff's department of the county where the property was found.
2. Fill out a written statement describing the property, explaining when and where the property was found, whether he or she knows who owns the property, and that he or she has not withheld or disposed of any part of the property. The statement, which is known as an "affidavit" or "declaration," must be signed under penalty of perjury.³⁵ A blank form for the statement should be available at the police or sheriff's office.

The law enforcement agency is then obligated to make reasonable attempts to find the property owner. If the property is not claimed by the owner within 90 days, the property belongs to the landlord if its reported value is less than \$250. However, if the reported value of the property is \$250 or more, the police or sheriff's department must publish a notice of the property once in a newspaper of general circulation. If no one claims, and proves ownership of, the property within seven days after the published notice, and if the landlord pays the cost of publishing the notice, the property belongs to the landlord.³⁶

3. If the law enforcement agency refuses to accept the property, then to avoid being held liable for damages to the property, the landlord should handle the property according to the same abandoned property procedure above which the police or sheriff would apply.

NOTICE: We attempt to make our legal guides accurate as of the date of publication, but they are only guidelines and not definitive statements of the law. Questions about the law's application to particular cases should be directed to a specialist.

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ENDNOTES

1. Civil Code section 1986.
2. Civil Code section 1980(d).
3. Civil Code section 1989, 1965(d). Code of Civil Procedure section 1174(e).
4. Civil Code sections 1981(d), 1965(e); Gruber v. Pacific State Sav. & Loan Co. (1939) 13 Cal.2d 144 [88 P.2d 137]; Love v. Keays (1971) 6 Cal.3d 339 [98 Cal.Rptr.881]; Gray v. Whitmore (1971) 17 Cal.App.3d 1 [94 Cal.Rptr.904].
5. Civil Code section 1965(a).
6. Civil Code section 1965(a)(1).
7. Civil Code section 1965(a)(3).
8. Civil Code section 1965(b).
9. Civil Code section 1965(a)(4).
10. Civil Code section 1965(e)(1).
11. Civil Code section 1965(d).
12. Civil Code section 1965(e).
13. Civil Code Section 1980 et seq.
14. Civil Code section 1983(a)
15. Code of Civil Procedure sections 715.030 and 1174(f).
16. Civil Code section 1987(a).
17. Civil Code section 1983(b).
18. Code of Civil Procedure Section 715.010(b)(3).
19. Civil Code section 1987(a).
20. Civil Code section 1987(b).
21. Civil Code section 1988.
22. Civil Code sections 1984 and 1985.

23. Civil Code section 1983(h).
24. Civil Code section 1983(b).
25. Civil Code section 1983(c).
26. Civil Code section 1990(a)(1).
27. Civil Code section 1990(a)(2).
28. Civil Code section 1990(b).
29. Civil Code section 1990(c).
30. Civil Code section 1989(a).
31. Civil Code section 1989(b).
32. Civil Code Section 1988(a).
33. Civil Code section 1989(c).
34. Civil Code section 2080.1.
35. Civil Code section 2080.1.
36. Civil Code section 2080.3.

Form of Notice to Former Tenant

Notice of Right to Reclaim Abandoned Property

To: _____
(Name of former tenant)

(Address of former tenant)

When you vacated the premises at _____

(Address of premises, including room or apartment number, if any)

the following personal property remained: _____

(Insert description of the personal property)

You may claim this property at _____

(Address where property may be claimed)

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim, not later than _____ (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to Civil Code section 1988. (Insert one of the statements below which applies to the facts of your situation.)

(1) If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale is deducted, the remaining money will be paid over to the county. You may claim the remaining money at any time within one year after the county receives the money.

Or

(2) Because this property is believed to be worth less than \$300, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above.

Dated: _____

(Signature of landlord)

(Type or print name of landlord)

(Telephone number)

(Address)

Form of Notice to Person Other than Former Tenant

Notice of Right to Reclaim Abandoned Property

To: _____ (name)

(address)

When _____ (name of former tenant) vacated the premises at _____ (address of premises, including room or apartment number, if any), the following personal property remained: _____ (insert description of the personal property).

If you own any of this property, you may claim it at _____ (address where property may be claimed). Unless you pay the reasonable cost of storage and take possession of the property to which you are entitled not later than _____ (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to Civil Code section 1988.

Dated: _____

(Signature of landlord)

(Type or print name of landlord)

(Telephone number)

(Address)